FH [redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

HMO/165543

PRELIMINARY RECITALS

Pursuant to a petition filed April 20, 2015, under Wis. Stat. § 49.45(5)(a), and Wis. Admin. Code § HA 3.03, to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on June 09, 2015, at Green Bay, Wisconsin.

The issue for determination is whether the HMO erred in its denial of the PA request for bariatric surgery.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:
Petitioner:

[redacted]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Dr. Donna Davidoff
Division of Health Care Access and Accountability

Madison, WI

ADMINISTRATIVE LAW JUDGE:
John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [redacted]) is a resident of Brown County.
2. Petitioner is 49 years old. She is a member of the United Health Care Community Plan ("HMO").
3. Petitioner's provider sought approval for bariatric surgery from the HMO.

4. The request was denied.

5. After grievance, the denial of the PA for bariatric surgery was affirmed on 2/6/15. Petitioner appealed.

DISCUSSION

Under the discretion allowed by Wis. Stat. §49.45(9), the Department now requires MA recipients to participate in HMOs. Wis. Admin. Code, §DHS 104.05(2)(a). MA recipients enrolled in HMOs must receive medical services from the HMOs' providers, except for referrals or emergencies. Wis. Admin. Code §DHS 104.05(3).

The criteria for approval by a managed care program contracted with the DHS are the same as the general MA criteria. See, Wis. Admin. Code, §DHS 104.05(3), which states that HMO enrollees shall obtain services "paid for by MA" from the HMO's providers. The department must contract with the HMO concerning the specifics of the plan and coverage. Wis. Admin. Code, §DHS 104.05(1).

If the enrollee disagrees with any aspect of service delivery provided or arranged by the HMO, the recipient may file a grievance with the Department or appeal to the Division of Hearings and Appeals.

Just as with regular MA, when the Department denies a grievance from an HMO recipient, the recipient can appeal the department's denial within 45 days. Wis. Stat. § 49.45(5), Wis. Admin. Code, §DHS 104.01(5)(a)3.

The criteria for approval of a gastric bypass, as of September 1, 2011, are as follows:

> The approval criteria for prior authorization (PA) requests for covered bariatric surgery procedures include *all* of the following:
>
> - ✓ The member has a body mass index greater than 35 with at least one documented high-risk, life-limiting comorbid medical conditions capable of producing a significant decrease in health status that are demonstrated to be unresponsive to appropriate treatment. There is evidence that significant weight loss can substantially improve the following comorbid conditions:
> - Sleep apnea.
> - Poorly controlled Diabetes Mellitus while compliant with appropriate medication regimen.
> - Poorly controlled hypertension while compliant with appropriate medication regimen.
> - Obesity-related cardiomyopathy.
> - ✓ The member has been evaluated for adequacy of prior efforts to lose weight. If there have been no or inadequate prior dietary efforts, the member must undergo six months of medically supervised weight reduction program. This is separate from and not satisfied by the dietician counseling required as part of the evaluation for bariatric surgery.
> - ✓ The member has been free of illicit drug use and alcohol abuse or dependence for the six months prior to surgery.
> - ✓ The member has been obese for at least five years.
> - ✓ The member has had medical evaluation from the member's primary care physician that assessed his or her preoperative condition and surgical risk and found the member to be an appropriate candidate.
> - ✓ The member has received a preoperative evaluation by an experienced and knowledgeable multidisciplinary bariatric treatment team composed of health care providers with medical, nutritional, and psychological experience. This evaluation must include, at a minimum:

- A complete history and physical examination, specifically evaluating for obesity-related comorbidities that would require preoperative management.
- Evaluation for any correctable endocrinopathy that might contribute to obesity.
- Psychological or psychiatric evaluation to determine appropriateness for surgery, including an evaluation of the stability of the member in terms of tolerating the operative procedure and postoperative sequelae, as well as the likelihood of the member participating in an ongoing weight management program following surgery.
- For members receiving active treatment for a psychiatric disorder, an evaluation by his or her treatment provider prior to bariatric surgery. The treatment provider is required to clear the member for bariatric surgery.
- At least three consecutive months of participation in a weight management program prior to the date of surgery, including dietary counseling, behavioral modification, and supervised exercise, in order to improve surgical outcomes, reduce the potential for surgical complications, and establish the candidate's ability to comply with post-operative medical care and dietary restrictions. A physician's summary letter is not sufficient documentation.
- Agreement by the member to attend a medically supervised post-operative weight management program for a minimum of six months post surgery for the purpose of ongoing dietary, physical activity, behavioral/psychological, and medical education and monitoring.

✓ The member is 18 years of age or older and has completed growth.

✓ The member has not had bariatric surgery before or there is clear evidence of compliance with dietary modification and supervised exercise, including appropriate lifestyle changes, for at least two years.

✓ The bariatric center where the surgery will be performed has been approved by Centers for Medicare and Medicaid Services/American Society for Bariatric Surgery (ASBS) guidelines as a Center of Excellence and meet one of the following requirements:

- The center has been certified by the American College of Surgeons as a Level 1 Bariatric Surgery Center.
- The facility has been certified by the ASBS as a Bariatric Surgery Center of Excellence.

ForwardHealth Update, No. 2011-44, effective September 1, 2011 (emphasis added).

The use of the Department's periodic Updates to set MA coverage guidelines is approved by law. See Wis. Admin. Code § DHS 108.02(4). The criteria at issue here were drafted because of the mandate that gastric bypass is limited to medical emergencies. Wis. Admin. Code, § DHS 107.06(4)(h).

I must concur with the Division's Medical Consultant. The record does not support a finding that petitioner's diabetes is unresponsive to treatment. This and other comorbid conditions such as sleep apnea were not established to be poorly controlled or life-limiting. Documentation in the record is simply insufficient. Petitioner has back pain but there is no documented connection between the pain and the reason for the requested surgery.

Additionally, there is no record establishing the required weight loss program for a minimum of three months. The only evidence of a psychological evaluation to determine appropriateness of the requested surgery was in 2013 which is no longer a timely and relevant evaluation.

CONCLUSIONS OF LAW

The Department/HMO did not err in denying the request for prior authorization of gastric bypass surgery.

THEREFORE, it is **ORDERED**

That this appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision.** Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 9th day of July, 2015

_____

\sJohn P. Tedesco
Administrative Law Judge
Division of Hearings and Appeals

State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: http://dha.state.wi.us

The preceding decision was sent to the following parties on July 9, 2015.

Division of Health Care Access and Accountability